

with the other 89 Senators who agreed it is a bad idea, at least until we have some kind of a plan to do it. So I was a little struck this morning when the Senator from Illinois said: Well, here is the proof of why we should close the Guantanamo prison.

We just have had an announcement we are going to try a terrorist, whose name is Ghailani, in the United States, and that proves we can close Gitmo.

Well, it does not prove that. It does not prove anything. What it proves is, we can try somebody in U.S. courts. We have done that with a few terrorists, and it is not a pleasant experience. The one that most of us recall in the Washington, DC, area was the trial across the river in Alexandria, VA, of Zacarias Moussaoui. That was extraordinarily difficult for the government to do. It was very difficult for at least two main reasons.

First of all, much of the evidence that was gained to try him was classified and could not be shared with him, and there were significant questions of due process as a result. How can we try somebody for a serious crime and not show them the evidence against them? That is one of the main reasons it is very difficult to try these terrorists for crimes.

The second problem is the security issue. The people in Virginia, in Alexandria—in the county there—will tell you, it was a costly and difficult thing for them to be able to conduct this trial of Zacarias Moussaoui there. Nevertheless, it was possible. Although costly, it was possible. It was even possible to get a conviction. I would suggest, primarily because of some decisions Moussaoui made. Nonetheless, it was possible to do so.

Everybody acknowledges there are some people who need to be tried for serious crimes, in effect, such as war crimes, and who should be tried in U.S. courts. It does not make it easy, but it can be done. What it does not prove is that it should be done for all of the people at Gitmo. In fact, not even the President suggests that. The President, in his speech a few weeks ago, acknowledged that many of the prisoners at Gitmo now are never going to have a trial. They are simply being held until the termination of the hostilities that have caused them to be captured and imprisoned in the first place. They are like prisoners of war who can be detained until the war is over.

Here, however, they do not even have the rights of prisoners of war under the Geneva accords because they do not adhere to the rules of war, they do not fight with uniforms for a nation state, and so on. They, in fact, are terrorists. So they are still allowed humane treatment, but they do not have the same rights as prisoners of war.

What that means is—as the President acknowledged, as the U.S. Supreme Court has acknowledged—we have a right to hold them until the cessation of hostilities so they do not kill any more people. We cannot just turn them loose.

The President, in his speech, made the point that at least 60—I think is the number that was used—of these prisoners have been released and that they were released by the Bush administration. That is true. The Bush administration was under a lot of pressure to try to release as many of these people who were being held as possible, and so they held determinations. They have a determination once a year and initially as to what the status of the individual is and whether he is still a danger. Eventually, in many of the cases, they decided the person could be released back to their home country or to a country that would take them and it would not pose a danger to the United States.

The problem is, there is a very high rate of recidivism among these terrorists. One in seven are believed to have returned to the battlefield. We have evidence of many of them, specifically by name, who returned and who caused a lot of death. There are two in particular I recall who both eventually engaged in suicide bombing attacks, killing, I think, 20-some people in one instance and at least a half dozen people in another instance.

So even when we try our best to make a determination that is fair to the individuals, but we do not want to hold people beyond the time they should be held—that they no longer pose a danger—we make mistakes and we release people back to the battlefield who are going to try to kill us, and they are certainly going to try to kill others, including our allies; and, in fact, they do so. That is a risk, but it is not a risk that we should lightly take.

The remaining 240-some prisoners at Guantanamo are the worst of the worst. These are people about whom it is very difficult to say: Well, they do not pose a danger anymore. We have already been through those, and, as I said, one in seven of those people have not only posed a danger, they have actually gone off and killed people.

So we have 240 of the worst of the worst, and the President correctly went through the different things that can happen to them. Some of them—a limited number—will be tried in U.S. courts, such as this terrorist Ghailani whom Senator DURBIN spoke of earlier this morning. It is hard to do. There are a lot of issues with it. But we will try to try some of them.

Others can be tried with military commissions. Others will not be able to be tried. They will have to be held. There may be a few whom we deem no longer a threat to us and they will have to be released but to whom nobody knows because nobody appears to want—well, the French will take one of them, and I think there may be another European country that said—maybe the Germans will take one. That still leaves a lot to go.

So the bottom line is, many are going to have to be detained. The question is, Where do we detain them? My

colleague from Illinois says: Well, there are other people who agree we should close Gitmo. Even my colleague from Arizona has certainly said that. But what he did not say is, before we have a plan to do so—and he himself has acknowledged this is really hard to do. And while he would like to close it—as he himself has said: I do not know how you do it—we certainly cannot do it without a plan, and we certainly cannot do it based upon the timetable that the President is talking about.

So it is one thing to say it would be nice to close it. It is quite another to figure out how to do it that would be safe for the American people.

Finally, just a point I want to mention—well, two final points. The Senator from Illinois said this is a problem he, meaning the President, inherited. No. The President did not inherit the problem of having to come up with a plan to close Gitmo by next January 20. The President made that problem himself. When he was sworn into office, I think it was within 3 days, he said: And we are going to close Gitmo within 12 months.

That is an arbitrary deadline that I submit he should not have imposed on himself or on the country because it is going to cause bad decisions to be made. We may have to try more people, such as this terrorist Ghailani, in the United States than we want to or than we should. In any event, we are going to have to try to find, I gather, facilities in which these people could be held in the United States.

FBI Director Robert Mueller testified before the House of Representatives that that posed a lot of problems, real risks, for the United States. Nobody is saying it cannot be done. The question is, Should it be done? Most of us believe, no, it should not be done; there are better alternatives.

The final point I want to make is this: What is wrong with the alternative of the prison at Guantanamo? It is a \$200 million state-of-the-art facility in which, as I pointed out yesterday, people are very well treated, humanely treated. They have gotten a whole lot better medical and dental care than they ever got or could have hoped to have gotten in their home countries, fighting us on the battlefield of Afghanistan or somewhere else.

The bottom line is, this is a top-rate facility. The people there do not mistreat prisoners. That is the myth. Somehow people conflate what happened at Abu Ghraib with Guantanamo. This brings up the last point. It is argued by my colleague from Illinois and others that, well, terrorists recruit based upon the existence of Guantanamo prison.

Think about that for a moment. Are we going to say because terrorists accuse us of doing something wrong—even though we did not—we are going to stop any activity in that area because we want to take away that as a recruitment tool? We would have to basically go out of business as the United